

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FERRELLGAS, L.P. by and through its
General Partner, Ferrellgas, Inc.,

Plaintiff,

v.

No. CIV 03-1323 BB/LFG

RAYMOND ZAMORA,

Defendant.

MEMORANDUM OPINION
AND
ORDER DENYING REHEARING

THIS MATTER is before the Court on Plaintiff's Motion for Rehearing [#42]. The Court having reviewed the briefs of the parties and being otherwise informed, finds the motion fails to persuade the Court, and it will be Denied.

Discussion

A motion for reconsideration is extraordinary in nature and may be granted only in exceptional circumstances. *Servants of the Paraclete v. Does*, 204 F.3d 1005 (10th Cir. 2000). It should not be used as a vehicle to reargue claims previously rejected unless there is a manifest error of law or gross misapprehension of material facts. *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997); *Shields v. Shetler*, 120 F.R.D. 123 (D. Colo. 1988).

At best, Plaintiff's motion again reaffirms that the merits are evenly balanced and must be resolved by the fact finder, even if Ferrellgas closes its Guadalupe County office, which is problematic. The Court did not say Plaintiff will suffer irreparable harm for which compensation damages would be inadequate. The fact that increased commercial competition normally favors the public interest does not cover Plaintiff's deficiencies on the merits and irreparable injury. The equities depend, like the merits in general, upon the resolution of substantial questions of material fact.

Plaintiff has not carried its burden of persuasion on the Motion for Preliminary Injunction.

ORDER

The Motion for Rehearing is therefore DENIED.

DATED this 4th day of June, 2004.

A handwritten signature in black ink, appearing to read "Bruce D. Black", is written over a horizontal line.

BRUCE D. BLACK
United States District Judge

For Plaintiff:

Matthew A. Pullen, YENSON LYNN ALLEN & WOSICK, Albuquerque, NM
Mark C. Tatum, SHOOK HARDY & BACON, Kansas City, MO

For Defendant:

Herbert M. Silverberg, Albuquerque, NM